

REMARKS

Applicant has studied the Final Office Action dated June 30, 2010. Claims 1, 2, 5, 6, 9, 10, 12, 13, and 22-31 are pending. Claims 1, 2, 5, 6, 9, 10, and 12 have been amended in compliance with 37 CFR § 1.116(b) to more clearly claim disclosed embodiments and claims 3, 4, 11, and 15-21 have been canceled without prejudice. Claims 22-31 have been newly added to claim disclosed embodiments more completely. Claim 1 is the only independent claim. No new matter has been added as the amendments and the new claims have support in the specification as originally filed.

It is submitted that the application, as amended, is in condition for allowance. Reconsideration is respectfully requested.

Claim for Foreign Priority under 35 U.S.C. § 119

The Examiner acknowledged, on page 2 of the Final Office Action, the Applicant's claim for foreign priority under 35 U.S.C. § 119 and indicated that a certified copy of the priority document had been received. The Examiner is respectfully requested to indicate the same on the Office Action Summary under the Priority under 35 U.S.C. § 119 section.

Objection to Specification

The Examiner objected to the specification due to informalities. Specifically, the Examiner objected to the term "hematite." The Examiner asserts that a complete and certified translation of the foreign priority document is required in order to concretely establish support for the hematite. Applicant respectfully disagrees with the Examiner's assertion.

As submitted in the paper submitted on April 6, 2010, the undersigned agent, who is knowledgeable in Korean Language, stated that that a more accurate English translation of the Korean word "대저석" and its Chinese name "代褚石" disclosed in the foreign priority document is hematite or haematite. See page 7 of the paper submitted on April 6, 2010. Furthermore, it was noted, in the paper submitted on April 6, 2010, that the present application was translated into English from Korean language of the foreign priority document. Therefore, the requested translation of the foreign priority

application would only require replacement of the term “a fulcrum stone” with “hematite” to correct minor errors of translation. It is respectfully submitted that submission of the English translation of the entire document is burden on Applicant as the undersigned agent already provided support for the term “hematite” on the records.

Nevertheless, claims have been amended and no longer recite the term “hematite.” It is, therefore, respectfully submitted that the grounds for objection have been overcome. It is respectfully requested that the Examiner withdraw the objection.

§ 112 Rejections

The Examiner rejected claims 1-6, 9-13, and 15-21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement and the enablement requirement.

It is believed that the foregoing amendments to the claims address the Examiner’s concerns with regard to the phrases “hematite,” “eliminating poisons and pollutants from the human body and for revitalizing cells,” and “five-primary substance stone” as the amended claims no longer recite these phrases. It is respectfully submitted that the grounds for the rejection have been overcome and it is respectfully requested that the Examiner withdraw the rejection.

§ 103 Rejections

Claims 1, 4, and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer (US 6,497,717) in view of Fujino (US 4,680,822), Yao (Chinese Patent Application No. 1114329), Shimiz (US 5,880,044), Jung (US 6,108,581), Ardizzone (US 6,666,813), Docter (US 6,143,946), Reiche (*Heat induced transformation of fossil mastodon ivory into turquoise ‘odontolite’. Structural and elemental characteristics*), Park (US 6,272,697), Wege (US 5,425,753), and Han (US 3,946,733). This rejection is respectfully traversed.

Claims 2, 4, and 6, 15, 17, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer, Fujino, Yao, Shimiz, Jung, Ardizzone, Docter, Reiche, Park, Wege, and Han and further in view of Shimada (US 5,632,768). This rejection is respectfully traversed.

Claims 3 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer, Fujino, Yao, Shimiz, Jung, Ardizzone, Docter, Reiche, Park, Wege, and Han, and further in view of Sakurai (JP H-06-181878). This rejection is respectfully traversed.

Claims 5 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer, Fujino, Yao, Shimiz, Jung, Ardizzone, Docter, Reiche, Park, Wege, and Han, and further in view of Shiu (US 4,203,438). This rejection is respectfully traversed.

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer, Fujino, Yao, Shimiz, Jung, Ardizzone, Docter, Reiche, Park, Wege, and Han, and further in view of Kuratomi (US 4,747,841). This rejection is respectfully traversed.

Claims 10 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer, Fujino, Yao, Shimiz, Jung, Ardizzone, Docter, Reiche, Park, Wege, and Han, and further in view of Lee (US 6,013,021). This rejection is respectfully traversed.

Claims 12, 13, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daffer, Fujino, Yao, Shimiz, Jung, Ardizzone, Docter, Reiche, Park, Wege, and Han, and further in view of Zofingen (CH Patent No. 683822). This rejection is respectfully traversed.

With this paper, claims 3, 4, 11, and 15-21 have been canceled without prejudice. It is, therefore, respectfully submitted that the rejection is moot with respect to claims 3, 4, 11, and 15-21 and it is respectfully requested that the rejection be withdrawn.

It is respectfully noted that the Federal Circuit has provided that an Examiner must establish a case of prima facie obviousness. Otherwise the rejection is incorrect and must be overturned. As the court recently stated in In re Rijkaert, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993):

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. ‘A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.’ If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned.” (citations omitted.)

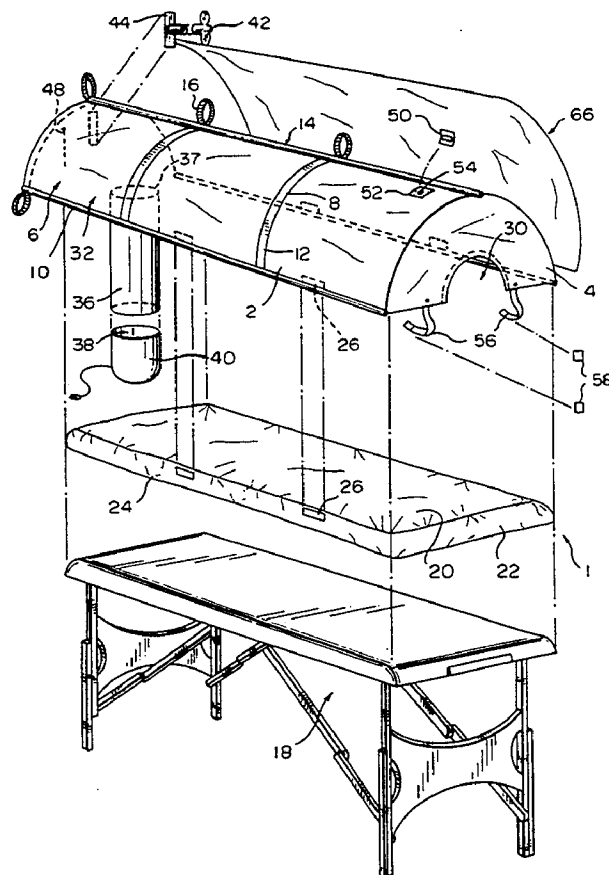
In *KSR Int'l Co. v. Teleflex inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007), the Supreme Court affirmed the well established principle that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” Applicant respectfully submits that no *prima facie* case of obviousness was established in the Office Action because the Examiner fails to identify a basis for asserting the existence of a teaching, suggestion or motivation for making the combination or modification posited in the rejection.

It is well-settled law that to support a finding of obviousness, a reference must provide some motivation, working without the benefit of the applicant's specification, to make the necessary changes in the device disclosed in the reference. The mere fact that a worker in the art could modify the reference to meet the terms of the claims is not, by itself, sufficient. The mere fact that a reference may be modified in the direction of the claimed invention does not make the modification obvious unless the reference expressly or impliedly teaches or suggests the desirability of the modification. In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984); Ex parte Clapp, 227 USPQ 972, 973 (Bd. App. 1985); Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. App. 1984).

Independent claim 1, as amended, recites an upper cover being adjustable in temperature in a range of 40°C-60°C and forming a first coating layer comprising a mixture of powders of at least mastodon bones, an elvan, mica, and a loadstone; a lower mat being adjustable in temperature in the range of 40°C-60°C and forming a second coating layer comprising the mixture, the upper cover and the lower mat defining an interior space; a plurality of herb essence suppliers externally disposed relative to and connected to the interior space formed by the upper cover and the lower mat, each of the plurality of herb essence suppliers having a discharge outlet connected to the interior space, wherein the plurality of two herb suppliers comprise a heating-type herb essence supplier configured to heat herb and evaporate fragrant materials from the herb, a vibration-type herb essence supplier configured to evaporate herb essence by vibration, and a combustion-type herb essence supplier configured to supply perfume by burning herb; and an air pump connected to the plurality of herb essence suppliers for supplying air.

With regard to the rejection of independent claim 1, it is respectfully submitted that even if the cited eleven (11) references, each of which allegedly discloses partial elements recited in independent claim 1, are combined, they fail to arrive at the presently claimed invention because teachings from each cited reference would not have suggested the claimed subject matter to a person of ordinary skill in the art. Moreover, it is respectfully submitted that other references fail to cure the above identified deficiencies of the eleven (11) references cited with regard to independent claim 1.

With regard to the rejection of independent claim 1, among others, Wege was cited for disclosing an herb essence supplier (4) connected to the interior space formed between an upper cover (2) and lower (1), the herb essence supplier having a discharge outlet (38 and 36) connected to the interior space in order to deliver the herb essence at Column 3, Ln. 44-64. Applicant respectfully disagrees with the Examiner's interpretation of Wege. The elements of Wege cited by the Examiner are disclosed in FIG. 1 shown below.



The cited portion of Wege discloses “[a]n opening 30 is formed on front closure 4 to allow if desired, the head of a user to extend outside the canopy 2.” It is not clear how the closure 4 of Wege has been interpreted to be equivalent to the herb essence supplier of independent claim 1. The cited portion of Wege further discloses “[a] cylindrical stack 36 extends down from inlet hole 37 on the bottom side 32 to engage an exhaust exit 38 of a hot pot 40 standing on the same floor supporting table 18” and “[t]he hotpot 40 can be filled with water and herbs.”

Even if the hot pot 40 of Wege may be interpreted as an herb essence supplier, the hot pot 40 cannot be interpreted as “a plurality of” herb essence suppliers “externally disposed” relative to and connected to the interior space formed by the upper cover and the lower mat, as recited in amended independent claim 1. Further, even if Han discloses a combustion type herb essence supplier, Shimada discloses a heat-type herb essence supplier, and Sakurai discloses a vibration type herb essence supplier, as asserted by the Examiner, no reference provides motivation to make changes such that the heating-type herb essence supplier, the vibration-type herb essence supplier, and the combustion-type herb essence supplier are connected in parallel, as recited in claim 5.

Accordingly, it is respectfully asserted that independent claim 1 and its dependent claims are allowable over the cited combination of references. It is respectfully requested that the rejection be withdrawn.

CONCLUSION

In view of the above remarks, Applicant submits that all pending claims of the present application are in condition for allowance. Reconsideration of the application, as originally filed, are requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned agent at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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